

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8353 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KAMLABEN K VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR PJ PATEL for Petitioner
Mr.V.B.Gharania, learned A.G.P.
for Respondent No. 1, 2

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/12/1999

ORAL JUDGEMENT

1. Petitioner herein has come with the prayer for appointment on compassionate grounds. Her case is that her husband, namely, Kaniyalal had been working in the Civil Hospital, Ahmedabad since 1982 as a Badli worker and discharged his duties as a Peon or Ward boy. On behalf of the employees, who were similarly situated, as to that of petitioner's husband Kaniyalal, litigation was

filed by way of Civil Suits and also by way of petitions before this Court and it is the further case of the petitioner that according to the orders passed in the petition, a list of workmen was prepared seniority wise for regularising their services. This list was prepared in July 1997. This list comprised of 30 workers including the petitioner's husband Kaniyalal, who figured at Sr.No.2. Before appropriate orders with regard to the regularisation could be issued on the basis of the list, which was prepared in July 1997, petitioner's husband expired on 19.9.97 and he is survived by the present petitioner and five children. It is also the case of the petitioner that subsequently 30 workers were regularised. However, the orders regularising the service of the petitioner's husband were not passed on the ground that he had already expired. Mr.Patel has submitted that even after the petitioner's husband had expired on 19.9.97, orders with regard to regularisation of the services should also have been passed in his case because the workers, who had been regularised, had been so regularised from the date of their appointment and the same course of action could have been followed in the case of the petitioner's husband and he too could have been regularised from date of his appointment i.e. in the year 1982 when he joined the services as a daily wager. It has been further submitted that over and above the aforesaid 30 employees, another group of 60 employees were also regularised. Reference has then been made to an order passed by this Court in Special Civil Application No.7000/89, which was also confirmed in Letters Patent Appeal No.238/90, as was filed on behalf of the State of Gujarat, whereby a Division Bench of this Court had passed an order on 16.8.90, the operative part of which reads as under:-

"It is further stated before us that respondent No.4 Nandkishore Bhagwatiparasad has expired. If Nandkishore is absorbed and his services are regularised as directed by the learned single Judge, his widow or one of his children will be entitled to compassionate appointment. As already observed we are not inclined to interfere with the direction given by the learned single Judge to absorb the respondents and regularise their services. Once respondent No.4 is absorbed and regularised as directed by the learned single judge, his widow or one of his children would be entitled to compassionate appointment on his death as per the policy of the Government. The appellants are, therefore, directed to consider the case of one of the heirs of the respondent

No.4 for such compassionate appointments according to the policy of the Government.

In the light of the above discussion, we see no reason to interfere with the order passed by the learned single Judge. In the result, this appeal fails and is dismissed."

On the basis of this order, the present petitioner requested the respondents to consider her case for appointment on compassionate grounds, as her husband had died while being in service and that had her husband not expired prior to the implementation of the list of the employees to be regularised, even if he was a Badli worker at the time of his death, he could be regularised from the date of his initial appointment as was done in other cases. She sent an application alongwith the copy of the judgment. The respondents neither granted relief nor gave reply and hence this petition has been filed in this Court on 29.9.98. On 30.9.98 notice was issued and in response to this notice, an affidavit in reply on behalf of respondent No.2 dated 14.12.98 was filed and, thereafter, an affidavit-in-rejoinder dt.26.3.99 was filed by the petitioner. On 26.11.99 when the matter came up before the Court, after hearing the parties while issuing Rule, the learned A.G.P. Mr. Gharania was asked to take instructions from the respondents as to whether they were prepared to give employment to the petitioner as a Badli worker and the matter was posted for final disposal for today. Mr. Gharania has submitted that the respondents would still take 2 to 3 months time to consider as to whether she can be given appointment as Badli worker or not. In such a fact situation, Mr. Patel has submitted that the matter may proceed today itself for final disposal as was fixed by order dt.26.11.99.

2. I have heard learned counsel for both the sides. On behalf of the respondents, the petitioner's claim is opposed only on the ground that petitioner's husband was a daily wager and, therefore, she was not entitled to the appointment on compassionate grounds as claimed by her. With regard to the order of the Division Bench passed in Letters Patent Appeal No.238/90, it has been stated that in the body of the order itself it has been mentioned that it would not be cited as a precedent.

3. The fact situation that the petitioner's husband was in employment since 1982, may be a daily wager or Badli worker and the fact that his name was included in the list of employees to be regularised, has not been

disputed. In view of this factual position, I find that the respondent - State of Gujarat and its functionaries, which are virtuous litigant and a part and parcel of the welfare State are not well advised to take the plea so as to over reach the claim of the petitioner and take advantage of the unfortunate demise of the petitioner's husband while his case for regularisation was pending and had the petitioner not died, he too would have been regularised like other 30 employees and 60 employees more as was done. Whether the Division Bench's order has to be considered as a precedent or not, it does not appeal to the reason that the functionaries of a welfare State should disown the just and honest claim of the poor petitioner, who is simply seeking a compassionate appointment as her husband had died while being in service in September 1997 before he could get the benefit of the regularisation. It appears that a suggestion, which was made by the Court to the learned A.G.P. on 26.11.99 to give employment to the petitioner during the pendency of this petition, even as a Badli worker, has not been considered in the right spirit. Except stating that the petitioner's husband had not been regularised during his life time, no other ground has been given out before this Court so as to resist the claim of the petitioner made in this petition. In the facts and circumstances of this case, I find that when a beneficial policy is adopted by the State, it must culminate into the real benefit to the persons for whose benefit such policy decisions are taken and such policy decisions, which are taken by the welfare State, cannot be defeated on technical grounds as have been raised in this case.

4. This petition, therefore, succeeds. The respondents are directed to consider the petitioner's application for compassionate appointment forthwith and issue appropriate orders giving suitable appointment to her on compassionate grounds, at the earliest but in no case later than 31.12.99. The petition is allowed and the rule is made absolute with no order as to costs.